

HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUNTERS CAPITAL, LLC et al.

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-00983-TSZ

NOTICE OF MOTION AND MOTION
FOR LEAVE TO PARTICIPATE AS
AMICUS CURIAE AND MEMORANDUM
IN SUPPORT THEREOF

NOTE ON MOTION CALENDAR:
Friday, December 4, 2020

Motion

The National Police Association ("NPA"), a nonprofit entity formed to support law enforcement, moves for leave to participate in this case as *amicus curiae*. A supporting Declaration of Ed Hutchison is filed herewith.

Memorandum

District courts have "broad discretion" to appoint *amicus curiae*. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir.1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293, 132 L.Ed.2d 418 (1995). This Court has declared that it may consider *amicus* briefs from non-parties "concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Skokomish Indian Tribe v. Goldmark*, No. C13-5071JLR, 2013 U.S. Dist. LEXIS 151310, 2013 WL 5720053, at *1 (W.D.

1 Wash. Oct. 21, 2013) (internal quotations omitted) (quoting *NGV Gaming, Ltd. v. Upstream Point*
 2 *Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)).

3 The Federal Rules of Civil Procedure do not address *amicus* appearances before the
 4 District Court. NPA proceeds by analogy to the Federal Rules of Appellate Procedure to seek this
 5 Court's permission to appear, and provides the following information, consistent with Rule 29 of
 6 the Federal Rules of Civil Procedure.

7 NPA is not seeking to present any private interest of its own, but to present its position as
 8 to the correct rules of law to be applied in cases involving police response to public protests and
 9 demonstrations. NPA is not aligned with any party in these cases but expects to present positions
 10 in support of plaintiffs.

11 This case is at an early stage. Although the Complaint was filed on June 24, 2020, it was
 12 subject to a comprehensive motion to dismiss which was resolved by Order of October 16, 2020,
 13 clarifying the issues that would remain in the case: substantive and procedural due process
 14 violations, and a claim for unlawful taking, all asserted to arise from the City of Seattle's actions
 15 supporting the creation and operation of an "autonomous zone" where the City did not provide
 16 police protection. The NPA understands the core question to be whether the "state created danger
 17 doctrine" will be applied under these circumstances.

18 No prejudice to the parties will arise from allowing *amicus* participation. NPA will not
 19 participate in discovery; its participation will be limited to filing one or more legal memoranda.
 20 NPA anticipates that defendants will at some point make a motion for summary judgment
 21 involving one or more of the legal defenses they have raised in their answers, and NPA proposes,
 22 consistent with FRAP 29(a)(6), to file any *amicus* briefs within seven days after defendants'
 23 present such a motion. Depending on the outcome of such motion, NPA may also propose to file
 24 a memorandum before trial concerning the appropriate legal standards to evaluate police conduct.

25 That is precisely the procedure this Court has previously adopted:

26 "In the absence of local rules governing the role of *amicus curiae*, the court will
 27 adhere to the applicable rules found in the Federal Rules of Appellate Procedure.

Accordingly, the Proposed Intervenor must file any memorandum commenting on a party's memorandum no later than seven days after the party's principal brief is filed.

Ctr. for Biological Diversity v. United States EPA, No. C13-1866JLR, 2014 U.S. Dist. LEXIS 20623, at *30 (W.D. Wash. Feb. 18, 2014).

This Court has frequently granted amicus status to associations akin to NPA. *See, e.g., id.* (granting amicus status to Western States Petroleum Association and the American Petroleum Institute). Amicus status is particularly appropriate where "the Court will consider issues of particular public interest". *Jewish Family Serv. of Seattle v. Trump*, No. 2:17-CV-01707-JLR, 2017 U.S. Dist. LEXIS 199900, at *3-4 (W.D. Wash. Dec. 5, 2017) (granting amicus status to Muslim Advocates and the McArthur Justice Center).

NPA believes that its briefing will benefit the Court by providing a broader perspective concerning the critical issues relating to a municipality's supplying, or declining to supply, police protection service. In particular, NPA takes the position that the proliferation of "stand down" orders across the United States in the face of riots and other civil disturbances, where violence against persons and property is all but certain to occur, but is accepted on account of the political agendas of the rioters, infringe on the fundamental civil rights of Americans to live in a free Republic.

Conclusion

For the foregoing reasons, NPA's motion for leave to participate *amicus curiae* should be granted.

Dated this 11th day of November, 2020.

s/ James L. Buchal

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